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			EXAMINER	
			NEWHOUSE, NATHAN JEFFREY	
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CARLOS ORLANDO VILACHÁ ZANONI and  
KLAUS UHLIG PETERSEN

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Appeal 2010-002998  
Application 09/745,098  
Technology Center 3700

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Before JENNIFER D. BAHR, JOHN C. KERINS and  
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal under 35 U.S.C. § 134 from the decision of the Examiner finally rejecting claims 1-13. The Examiner rejects claims 1 and 7 under 35 U.S.C. § 102(b) as being anticipated by Punte (US 2,327,455, issued Aug. 24, 1943); claims 2-6 and 8-12 under 35 U.S.C. § 103(a) as being unpatentable over Punte and Leenaards (US 3,827,594, issued Aug. 6, 1974); and claim 13 under § 103(a) as being unpatentable over Punte and Ferngren (US 2,099,056, issued Nov. 16, 1937). The Examiner has withdrawn claims 14-16 from consideration. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

#### OPINION

*The Rejection of Claims 1 and 7 under § 102(b) as being Anticipated by Punte*

Claim 7, reproduced below, with emphasis added, is illustrative of the claimed subject matter:

7. A closed container comprising:  
a bottle having a mouth;  
a crown closure secured over said mouth;  
said crown closure comprising:  
a shell having an inside, a top, a skirt, a curved portion and *a plurality of serrations which do not project into said curved portion*;  
said curved portion disposed between said top and said skirt;  
a liner secured to said inside; and  
*wherein said curved portion is adapted to be the same shape as the contour of said mouth.*

Claim 1 recites a crown closure including a curved portion, “a plurality of serrations which do not project into said curved portion” and “wherein said curved portion is adapted to be the same shape as the mouth contour of a bottle.”

A prior panel of this Board interpreted the term “contour of said mouth” in *Ex Parte Zanoni*, Appeal No. 2004-0187. In an opinion mailed March 30, 2004, the prior panel reversed a rejection of claims 1-12 under § 102(b) as being anticipated by Leenaards. The prior panel reasoned that:

We first note that on page 3 of the specification the “mouth contour” of the bottle is defined to mean the curved portion at the mouth, as shown at 42 in Figure 2a, which comprises an upper portion 43 and a lower portion 45. Leenaards is directed to a twist-off crown closure that utilizes a seal, and the examiner has made reference to Figures 2 and 5, contending that the terms of the claim are met because the crown closure has a “curved portion that is the same shape as the mouth contour of the bottle prior to crimping” (Paper No. 8, page 4). We do not agree. There is no description in Leenaards that supports the examiner’s conclusion and, from our perspective, neither do the drawings. It appears to us from Figures 2-6 that the inner curve of the Leenaard’s crown closure merely touches the outer curve of the bottle mouth over at most a very small arc, and therefore does not meet the requirement in the claim that it be adapted to be “the same shape” as that portion of the bottle, considering the definition the appellants have provided for this terminology.

(*Id.* at 4-5).

Claims 1 and 7 have not been amended since that opinion construed the term “mouth contour.” Under the circumstances of the case, we see no

1 reason to re-open the issue of how the term is to be interpreted. The  
2 definition articulated by the prior panel implies that “the same shape of the  
3 contour of the mouth” includes both the shape of an upper, downwardly and  
4 outwardly sloping portion of the mouth and the shape of a lower, inwardly  
5 and downwardly sloping portion of the mouth. According to this definition  
6 and in view of the holding of the prior panel, a curved portion of a crown  
7 closure cannot be found to meet the limitation “wherein said curved portion  
8 is adapted to be the same shape as the mouth contour of a bottle” in claim 1  
9 or “wherein said curved portion is adapted to be the same shape as the  
10 contour of said mouth” in claim 7 if the curved portion is adapted to  
11 conform only to the shape of a very small arc of the upper portion of the  
12 mouth of a bottle.

13 Punte discloses a padless crown cap including a generally flat top and  
14 a depending skirt 10. (Punte 1, second column, ll. 38-42). Punte describes  
15 the cap prior to being crimped onto a bottle as having an outer or sealing  
16 portion 8 which turns rather sharply as at reference numeral 9 in Figure 2 of  
17 Punte. (Punte 1, second column, l. 52 – Punte 2, first column, l. 6). It is  
18 apparent from Figure 2 that the curved portion 9 is not the same shape as the  
19 contour of the mouth of an associated bottle. Nevertheless, Figure 2 of  
20 Punte depicts the skirt 10 as having serrations which do not project into the  
21 curved portion 9. The Examiner does not appear to find that the uncrimped  
22 crown cap depicted in Figure 2 itself anticipates claim 1 or claim 7. (*See*  
23 *Ans. 6* (relying on Figure 2 of Punte only as evidence of the locations of the  
24 serrations)).

25 Once Punte’s crown cap is crimped over the mouth of a suitably  
26 shaped bottle, material of the crown cap as depicted in Figure 3 deforms to

1 present a larger curved portion 13. (*See* Punte 2, first column, ll. 20-29).  
2 The Examiner finds, and the Appellants do not contest, that the curved  
3 portion 13 has the shape of both upper and lower portions of the mouth of  
4 the associated bottle. (*See* Ans. 6; *see generally* App. Br. 5-8; Reply Br. 2-  
5 3).

6 The Appellants instead argue that the serrations of the crimped crown  
7 cap depicted in Figure 3 of Punte extend into the curved portion 13. (App.  
8 Br. 7). None of the drawing figures provides a clear depiction of the spatial  
9 relationship between the serrations and the curved portion 13 once the crown  
10 cap has been crimped over the mouth of the associated bottle. Neither has  
11 the Examiner identified any passage of the written description of Punte  
12 which might show that the serrations fail to project into the curved portion  
13 13. The disclosure of Punte does not support a finding by a preponderance  
14 of the evidence that the serrations of Punte's cap do not project into the  
15 curved portion 13.

16 In the alternative, the Examiner finds that "the 'curved portion.' is  
17 considered to be the portion of Punte of the reshaped or deformed portion 13  
18 above the serrations and below the top of the crown closure." (Ans. 7). This  
19 alternative finding runs afoul of the claim construction in the holding in the  
20 prior appeal. The disclosure of Punte does not support a finding by a  
21 preponderance of the evidence that the part of the curved portion 13 above  
22 the serrations and below the top of the crown closure conforms to the shape  
23 of more than a very small arc of the upper portion of the mouth. Punte's  
24 drawings and written description do not permit a finding that the part of the  
25 curved portion 13 above the serrations and below the top of the crown  
26 closure has the shape of the "contour of the mouth," that is, of portions of

1 the outer contour of the bottle near the mouth corresponding to both the  
2 upper and lower portions 43, 45 depicted in Figure 2a of the Appellants'  
3 drawing. The Examiner has not shown that one may define a curved portion  
4 of Punte's crown cap, whether in a crimped or uncrimped state, which meets  
5 both the limitation requiring "a plurality of serrations which do not project  
6 into said curved portion" and the limitation "wherein said curved portion is  
7 adapted to be the same shape as" the mouth contour of a bottle.

8 The Examiner has not shown that Punte anticipates the subject matter  
9 of claim 1 or of claim 7. We do not sustain the rejection of claims 1 and 7  
10 under § 102(b) as being anticipated by Punte.

11  
12 *The Rejections of claims 2-6 and 8-12 under § 103(a) as being Unpatentable*  
13 *over Punte and Leenaards; and of Claim 13 as being Unpatentable over*  
14 *Punte and Ferngren*

15 The Examiner cites Leenaards for the teaching of a "crown closure  
16 with a radius of a curved portion between the top and skirt being 2 to 5 mm,  
17 the diameter of the shell of the crown closure being 20 to 40 mm and the  
18 skirt of the crown closure having 21 serrations for a 25 mm diameter crown  
19 closure." (Ans. 5). The Examiner cites Ferngren for the teaching of a  
20 "bottle and closure wherein the bottle mouth has an upper and lower portion  
21 with a fulcrum therebetween." (*Id.*) The Examiner provides no reasoning  
22 with rational underpinning which persuasively explains how the combined  
23 teachings of Punte and Leenaards, in the rejection of claims 2-6 and 8-12, or  
24 of Punte and Ferngren, in the rejection of claim 13, would have provided one  
25 of ordinary skill in the art reason to fabricate a crown closure with a curved  
26 portion meeting both the limitation requiring "a plurality of serrations which  
27 do not project into said curved portion" and the limitation "wherein said

1 curved portion is adapted to be the same shape as” the mouth contour of a  
2 bottle. We do not sustain the rejection of claims 2-6 and 8-12 under § 13(a)  
3 as being unpatentable over Punte and Leenaards; or the rejection of claim 13  
4 under § 103(a) as being unpatentable over Punte and Ferngren.

5  
6 DECISION

7 We REVERSE the Examiner’s decision rejecting claims 1-13.

8  
9 REVERSED

10  
11  
12  
13 Klh